

U.S. Small Business Administration

FAQS: FREQUENTLY ASKED QUESTIONS

8(a) Business Development Program

1. **What is Surplus Property?**

If a federal agency no longer has a need for personal property, it declares the property excess property, and the property is then made available to all other federal agencies. If no federal agency claims the excess property within a certain amount of time, it is declared surplus property.

2. **Are 8(a) Participants Eligible to Receive Surplus Property?**

The Small Business Act provides that eligible 8(a) Program participants are qualified to receive federal surplus property on a priority basis. 15 U.S.C. § 636(j)(13)(F).

3. **How is Surplus Property Transferred to an 8(a) Participant?**

Surplus property is transferred to an 8(a) participant by a State Agency for Surplus Property (SASP).

4. **What is a SASP?**

Every state has created a SASP, which is a state agency responsible for distributing surplus property to eligible recipients, monitoring its use, and managing the future retain, transfer or disposal of the property, if appropriate.

5. **Do 8(a) Participants Receive Any Special Priority From the SASP?**

Although the Small Business Act provides that surplus property may be transferred to 8(a) participants on a priority basis, the SASP is responsible for equitably distributing property among all eligible recipients and does not afford 8(a) participants a priority. 15 U.S.C. § 636(j)(13)(F).

6. **How May Surplus Property Be Used?**

Property must be used by the 8(a) participant during the normal conduct of its business operations, and may not be sold or transferred to any other party, including affiliates, until one year after the concern graduates from the 8(a) Business Development (8(a) BD) program. 15 U.S.C. § 636(j)(13)(F).

7. **What Surplus Property Is Available?**

An 8(a) participant can find out what surplus property is available by contacting the SASP in the state in which the participant's principal place of business is located.

8. **What Should an 8(a) Participant Do If It Identifies Surplus Property That It Wants?**

Once an 8(a) participant identifies surplus property it wishes to acquire, it should send a letter to the SASP identifying the desired property and specifying how it will use the property. The participant should also identify its servicing District Office. In the letter it must certify the following:

- a. That it is eligible to receive surplus property, and that the intended use of the property is consistent with the participant's business plan;
- b. That it will use the property in the normal conduct of its business operations, and that if it does not, it will be liable for the fair rental value of the property from the date of receipt;
- c. That it will not sell or transfer the property to any other party until one year after it graduates from the 8(a) ED Program, unless directed to do so by the SASP or SBA;
- d. That it will, at its own expense, return the property to the SASP or transfer it to another participant if directed to do so by the SASP or SBA;
- e. That it will return the property to the SASP or follow any other directions given by the SASP with regard to the disposition of the property if it is terminated from the 8(a) ED Program;
- f. That, should it breach its agreement not to sell or transfer the property without the written consent of the SASP or SBA prior to one year after graduation, it will be liable to the federal government for the established fair market value or the sale price of the property, whichever is greater; and
- g. That it will give SBA and the SASP access to inspect the property and all records pertaining to it.

9. **What Will the SASP Do When It Receives the Participant's Letter Requesting Surplus Property?**

Once the SASP receives the participant's letter, it will contact the servicing District Office for a written determination that the firm is an eligible 8(a).

10. **Who Decides Whether Certain Property Will Be Distributed to a Participant?**

The SASP is responsible for distributing property among eligible donees, including 8(a) participants.

11. **Who Decides Whether a Participant Is Eligible for Surplus Property?**

The Assistant District Director for 8(a) BD (ADD/8(a)BD) at the servicing District Office is the official responsible for deciding whether a participant is eligible for surplus property.

12. **What Date Is Used for Determining Eligibility?**

The proposed date of transfer, as specified by the SASP, is the date used for determining eligibility.

13. **What Should the ADD/S (a) BD Do If He or She Receives a Written Communication From a SASP Concerning a Proposed Surplus Property Transfer?**

Once the ADD/8(a) BD receives a written communication from a SASP concerning a proposed surplus property transfer, the ADD must:

- a. Determine whether the proposed transferee is an eligible 8 participant. The following participants are not eligible to receive surplus property:
 - (1) Participants that have been suspended or terminated from the 8(a) BD Program, or that are proposed for termination, suspension, or graduation;
 - (2) Participants that are not in compliance with SEA reporting requirements; and
 - (3) Participants that are debarred or suspended under the Federal Acquisition Regulations (FAR).
- b. Determine whether the proposed use of the property is consistent with the participant's normal business operation and business plan. This is accomplished by reviewing the participant's past business plans and annual reviews. If the ADD does not have a full understanding of what the property is, what it does, or how it is used, he or she should contact the SASP and 8(a) participant for clarification. If

it is unclear how the participant will use the property in the normal conduct of its business operation, then the ADD should require the participant to submit a written explanation.

14. What Should the ADD/8(a)BD Do If He or She Determines That a Participant Is Not Eligible to Receive Surplus Property?

If the ADD/8(a)BD determines that a participant is not eligible to receive surplus property, the ADD must send the SASP a letter explaining why the participant is not eligible, with a copy to the 8(a) participant.

15. What Should the ADD/8(a)BD Do If He or She Determines That a Participant Is Eligible to Receive Surplus Property?

If the ADD/8(a)BD determines that a participant is eligible to receive surplus property, he or she must send the SASP a letter indicating the participant is eligible, with a copy to the 8(a) participant.

16. What Happens After the Servicing District Office Has Verified That a Participant Is Eligible to Receive the Identified Surplus Property?

Once eligibility is verified, the SASP and participant must agree on the fair market value of the property at the time of transfer. The SASP must provide SBA with a written record of the transfer, which must include the agreed fair market value. The participant must execute all SASP transfer documentation, and pay all associated transfer fees or costs.

17. Should Any SBA Official Sign or Execute Any Form or Documentation That Gives SBA Title To or Responsibility For Surplus property That Is to Be Used By an 8(a) Participant?

Under no circumstances should any SEA official ever sign or execute any document that gives SEA title to or responsibility for surplus property that is to be used by an 8(a) participant.

18. Who has Title to Surplus Property That Has Been Transferred to an 8(a) Participant?

Title passes from the SASP to the 8(a) participant when the participant executes the applicable SASP documentation and receives possession of the property. However title is conditional, and the 8(a) participant may not sell, transfer or otherwise dispose of the surplus property until one year after the participant graduates from the 8(a) BD Program, unless directed to do so, in writing, by SBA or the SASP.

19. **What Is the Servicing District Office's Role after Property Has Been Transferred?**

On at least an annual basis, the servicing District Office must review whether the conditions. This review may include a site visit. In addition, if at any time the servicing District Office receives credible information that surplus property is not being used in accordance with the applicable terms and conditions, it must conduct an investigation to determine the validity of the information.

20. **What Should the Servicing District Office Do If a Participant No Longer Needs Surplus Property in its Possession?**

If a participant no longer needs surplus property in its possession, the servicing District Office should instruct the participant to immediately contact the SASP for instruction. The servicing District Office should not take possession of the property, nor should it assume any responsibility for the property. If the SASP does not request the participant to return the property, then the participant may sell, transfer, or otherwise dispose of the property.

21. **What Should the Servicing District Office Do If It Finds That Property Is Not Being Used in Accordance With Applicable Terms and Conditions?**

If the Servicing District Office finds that property is not being used in accordance with applicable terms and conditions, the District Office may

- a. Require that the property be placed in proper use within a specified time;
- b. Require that the property be returned to the SASP, or be transferred to another participant;
- c. Initiate proceedings to recover the fair rental value of the property, if requested by the SASP; and/or
- d. Initiate proceedings to terminate the participant from the 8(a) ED Program.

22. **What Should the Servicing District Office Do If a Firm Sells or Disposes of Property in Violation of the Applicable Terms and Conditions?**

If a participant sells or disposes of property in violation of the applicable terms and conditions, the servicing District Office must immediately contact the SASP. In addition, it may:

- a. Initiate proceedings to recover the fair market value of the property at the time of transfer, or the sale price, whichever is greater, if requested by the SASP; and/or

- b. Initiate proceedings to terminate the participant from the 8(a) BD Program.

23. **What happens to any Funds SBA Receives as a Result of the Participant's Misuse or Unauthorized Sale of Surplus Property?**

Any funds SBA receives as a result of the participant's misuse or unauthorized sale of surplus property must be remitted to the United States Treasury as miscellaneous receipts.